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U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

FILED

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

ROBERT H. SHEMWELL, CLERK

BY SS DEPUTY

CRYSTAL OIL COMPANY AND
CRYSTAL EXPLORATION AND
PRODUCTION COMPANY,
Plaintiffs,

CASE NO. CV 95-2115S

vs.

JUDGE STAGG

ATLANTIC RICHFIELD COMPANY,
Defendant.

MAGISTRATE JUDGE PAYNE

REPLY MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO TRANSFER
CASE TO THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLORADO

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INTRODUCTION

Plaintiffs take the convenient position in their Response Memorandum that this case boils down to a clearly-defined, two-count dispute between two parties--which, incidentally, involves some property in Colorado. Against this backdrop, plaintiffs casually conclude that this Court will exonerate both Crystal and CEPCO from cleanup liability at Rico with little need to delve into the extensive documentation and other information available in Colorado pertaining to these matters.

Plaintiffs' view that this is an easily-resolved claim best disposed of in Louisiana is wholly misguided, for at least three reasons. First, neither of plaintiffs' claims against ARCO present straightforward legal arguments, but instead require a host of factual testimony and document review grounded in Colorado. Second, notwithstanding plaintiffs' flippant reference to ARCO's "hypothetical cost recovery case," ARCO has in fact counterclaimed under CERCLA for response costs, invoking numerous Colorado considerations and parties. Third, this is not a two-party dispute, but instead, like most CERCLA matters, inherently involves the cumbersome process of spreading cleanup costs among numerous responsible parties, implicating a variety of Colorado interests.¹

Recent indications of plaintiffs' discovery approach suggest that their narrow portrait of this case is merely posturing for the purposes of this motion. Plaintiffs have now filed their first set of discovery, which was represented to the Court to be narrowly focused solely on their bankruptcy and contract claims. Instead, this discovery contains a rash of

¹ The expansive nature of this case will become particularly evident when ARCO files its third-party claims against NL Industries, Inc. and possibly other parties, all of whom will doubtlessly crossclaim and/or counterclaim against the current parties, as is so typical in CERCLA cases. Parties such as NL Industries are subject to neither the sales contract provisions nor the bankruptcy facts upon which plaintiffs so heavily rely.

sweeping document requests and interrogatories² clearly directed to the broader CERCLA issues central to this case. In short, it appears that plaintiffs are now realizing that, as a result of their own lawsuit, the CERCLA litigation conundrum is now unfolding. A Colorado court is the only appropriate forum for these lengthy proceedings.

ARGUMENT

I. A COMPLEX, MULTI-ISSUE CASE CONTAINING A BANKRUPTCY COMPONENT MAY BE TRANSFERRED TO A MORE CONVENIENT FORUM

Plaintiffs first attempt to downplay the Colorado-based nature of this case by overstating the force of bankruptcy law and the bankruptcy aspects of this case.

A. NO BANKRUPTCY DOCTRINE REQUIRES THIS COURT TO DETERMINE THE APPLICABILITY OF THE BANKRUPTCY DISCHARGE TO ARCO'S CLAIM.

First, plaintiffs are flat wrong in stating that federal law requires this Court to hear this case.³ Contrary to plaintiffs' assertions, all federal and state courts have concurrent jurisdiction with bankruptcy courts over actions such as this. 28 U.S.C. § 1334(b); Matter of Brady, Texas, Muni. Gas Corp., 936 F.2d 212, 218 (5th Cir. 1991); In re Siragusa, 27 F.3d 406 (9th Cir. 1994); In re Weinberg, 153 B.R. 286, 290 (Bankr. D.S.D. 1993); In re Morales, 128 B.R. 527 (Bankr. E.D. Mich. 1991); Fed. R. Civ. Proc. 8(c). Moreover, the express retention of jurisdiction by a bankruptcy court after plan confirmation to determine creditors'

² Examples include: (1) "Please produce all documents that support, relate to or are inconsistent with your contention that any persons you have identified as PRPs for the RICO Area Mining Site or the RICO Area Tailing Sites are PRPs under CERCLA." (Request for Production No. 27) and even more broadly, (2) "Please produce all documents that discuss, identify, or relate to all mining sites for which ARCO or any of its affiliates or subsidiaries received a request for information from a private party notifying or alleging that ARCO, any affiliate, or any subsidiary was a potentially responsible party under CERCLA, the dates on which any such request for information was received, and the types and scope of contamination alleged to exist at the mining sites." (Request for Production No. 32).

³ See Plaintiffs' Memorandum at 5 where Plaintiffs state "federal law *mandates that this Court* must decide" and that this Court "is *the only Court* that can determine" this case. (Ital. emphasis added.)

claims does not divest other courts of their concurrent jurisdiction to resolve such matters. Matter of Brady, Texas, Muni. Gas Corp. at 219. In fact, countless district courts have not hesitated to resolve CERCLA claims raising bankruptcy issues without referring the matter back to the original bankruptcy courts (or the associated district court). See, e.g., AM Int'l, Inc. v. Datacard Corp., 146 B.R. 391 (N.D. Ill. 1992).

The cases cited by the plaintiffs do not stand to the contrary. In fact, In re Texaco, Inc., 182 B.R. 937, flatly contradicts Crystal Oil's argument that federal law mandates that this Court decide this action. Plaintiffs excised from one of their Texaco quotes⁴ the court's observation that a non-bankruptcy court "undoubtedly has concurrent jurisdiction under 28 U.S.C. § 1334(b) to decide the merits" of the case. Texaco, 182 B.R. at 946. Moreover, a related Texaco bankruptcy case clearly holds that a district court has concurrent jurisdiction even though the bankruptcy discharge occurred in a bankruptcy court in another state. L.D. Williams v. Texaco, Inc., 165 B.R. 662, 670 (D. N.M. 1994); see also In re Franklin, 179 B.R. 913 (Bankr. E.D. Cal. 1995).

Plaintiffs also contend that a discharge injunction must be interpreted by the issuing court for the same reason that a "lift stay" action under 11 U.S.C. § 362 must be decided by the bankruptcy court presiding over a debtor's case. Plaintiffs' Memorandum at n.3. This argument is flawed because a proceeding to determine the scope of a § 362 stay, unlike a motion to lift stay, clearly may be heard by any federal court. In re Baldwin - United Corp. Litigation, 765 F.2d 343, 347 (2d Cir. 1985); In re Watson, 192 B.R. 739 (9th Cir. BAP 1996); NLRB v. Evans Plumbing Co., 639 F.2d 291 (5th Cir. 1981).⁵

⁴ See Plaintiffs' Memorandum at 12.

⁵ In fact, In re Related Asbestos Cases, 23 B.R. 523, 526 (N.D. Cal. 1982), cited by plaintiffs, expressly holds that federal law does not vest the Bankruptcy Court with exclusive power to determine the scope of 11 U.S.C. § 362.

The other case primarily relied on by plaintiffs, Celotex Corp. v. Edwards, 131 L. Ed.2d 403, 115 S.Ct. 1493 (1995), is wholly irrelevant to this motion. In that case, a bankruptcy court had issued an injunction specifically forbidding a creditor from executing on a specific bond without first obtaining the approval of that particular bankruptcy court. Celotex, 131 L. Ed.2d at 407. In direct violation of that injunction, the creditor sought relief from that injunction from a different court. The issue before the Supreme Court was not whether a court has the authority to interpret or enforce an injunction of another court; rather, it was whether a court has the power to vacate an injunction issued by another court. The Supreme Court held only that the creditor must petition the issuing court for relief from an injunction where the clear provisions of the injunction require that relief be obtained from that court. Celotex, 131 L. Ed.2d at 414.

The present case is starkly different from Celotex. Here, the bankruptcy court never issued an order directing that Crystal Oil's discharge order be tested as to new claims solely before this Court. As the Fifth Circuit (and the Texaco court) have held, other federal and state courts have concurrent jurisdiction over such claims. Matter of Brady, Texas, Muni. Gas Corp., supra.

Plaintiffs' unfounded jurisdictional arguments also provide no support for their claim that this Court is "best situated" to enforce the bankruptcy injunction. This Court itself is not the bankruptcy court, and it neither heard nor decided Crystal's bankruptcy (instead, the bankruptcy court unit of this Court presided). This Court is no more familiar with Crystal's bankruptcy than would be the District Court of Colorado, and is much less familiar than Colorado with the underlying factors, discussed below, which will drive the resolution of this bankruptcy claim.

B. PLAINTIFFS' BALD ASSERTIONS THAT ARCO'S CLAIM IS
BARRED BY DISCHARGE IGNORE THE COLORADO-BASED
INQUIRY REQUIRED TO RESOLVE THIS ISSUE.

Whether ARCO's claim against Crystal Oil was discharged in 1986 depends on whether ARCO fairly contemplated the existence of such a claim against Crystal Oil at the time of the confirmation order. In re Jensen, 995 F.2d 925, 930 (9th Cir. 1993); In re National Gypsum, 139 B.R. 397 (N.D. Tex. 1992). Crystal Oil bears the burden of proving under that standard that the bankruptcy discharged ARCO's claim. In re Costa, 172 B.R. 954 (Bankr. E.D. Cal. 1994).

Presently, there are no facts before the Court showing that ARCO had any knowledge in 1986 about a potential CERCLA claim against Crystal Oil relating to the Rico Site. The facts cited in Plaintiffs' Memorandum regarding preliminary sampling efforts in the area in 1985 gave ARCO no reason to suspect that a CERCLA proceeding would unfold, or that it then held a claim against Crystal Oil, the parent corporation of the former mine operator, for any future remediation costs.

If the plaintiffs are to sustain their burden of showing that this claim has not been previously discharged, it will require extensive review of the complex factual record, spanning several decades, regarding the evolution of cleanup activities at this mining site. The attached Affidavit of Lary D. Milner illustrates the wealth of Colorado-based information and witness testimony that must be presented to resolve this issue. In short, virtually all site personnel (few of whom still work for ARCO), agency representatives and records that surround the bankruptcy discharge issue are located in Colorado. Plaintiffs' view that the existence of a bankruptcy issue supports their choice of forum simply puts form over the substantive Colorado-based issues that this claim presents.

**II. A CAREFUL SECTION 1404(a) ANALYSIS CLEARLY FAVORS
TRANSFER TO THE DISTRICT COURT OF COLORADO**

**A. PLAINTIFFS' CHOICE OF FORUM SHOULD BE AFFORDED
MINIMAL DEFERENCE IN THIS CASE.**

Plaintiffs vastly overstate the degree of deference afforded their original choice of forum and the relative convenience to the parties of continuing this case in Louisiana, thereby attempting to circumscribe the trial judge's wide discretion to transfer venue. See Jarvis Christian College v. Exxon Corp., 845 F.2d 523, 528 (5th Cir. 1988) (transfer decisions are committed to a judge's discretion); Hercules Co. v. S/S Aramis, 226 F. Supp. 599, 600 (E.D. La. 1964). For instance, plaintiffs suggest that ARCO does "substantial business and regularly litigates" in this forum. Plaintiffs' Memorandum at 14. While ARCO conducts oil and gas operations in this state, and litigates claims pertaining to such issues, it does not do business or litigate with respect to the array of environmental claims which have arisen from Anaconda's former mining activities. These claims are uniformly litigated in individual western courts closely familiar with the nuances of these complex mining claims.

This dispute germinated in Colorado, building on years of mining activity at the RICO site; the operative activities at issue, such as drafting and executing the conveyance documents, also transpired in Colorado. Any deference to a plaintiff's choice of venue is lessened when the operative facts, as in this case, occur outside of plaintiff's chosen forum. AT&T v. MCI Communications Corp., 736 F. Supp. 1294, 1306 (D.N.J. 1990). Transfer is justified, as in this case, where the weight and importance of factors (not how many are "checked off") favor a more appropriate forum. Plaintiffs underestimate the integral relationship between this dispute and Colorado in asserting that their choice of forum in Louisiana carries significant weight.

B. KEY WITNESSES AND DOCUMENTS RESIDE IN COLORADO.

Numerous Colorado witnesses, the vast majority of whom are not employed by ARCO, will be required to testify to decide plaintiffs' two declaratory judgment claims and

the overriding multi-party CERCLA claims. Defendant previously outlined specific categories of witnesses (and the areas of their testimony)⁶ required to wade through these complex issues, rather than listing particular individuals at this early, pre-discovery stage. Plaintiffs complained about a perceived lack of specificity (Plaintiffs' Memorandum at 16), so Defendant has detailed dozens of examples (though by no means all) of specific, key witnesses on a variety of clearly relevant topics. See Affidavit of Lary D. Milner.

Plaintiffs' view of the limited need for factual testimony and documentation is apparently based on the notion that they have a "slam dunk" case to exonerate Crystal Oil and CEPCO on two respective grounds. A mere reading of the disputed contract conveying the Rico Site from Crystal Exploration to ARCO belies this view. The purported \$30,000 cap and other potentially exculpatory language cited by plaintiffs (see Plaintiffs' Memorandum at 2-3) relate only to a possible action by the Colorado Water Quality Control Division at the time the parties executed the contract for anticipated compliance problems at Silver Creek Mill, the Blaine Tunnel and the St. Louis Tunnel. See Defendant's Memorandum at 11-12. In the same vein, Section 12(d) of the contract, also relied upon by plaintiffs (Plaintiffs' Memorandum at 3), when read in context, clearly does not release or indemnify CEPCO from all future claims -- especially those involving a statute not yet passed -- but instead relates to ongoing obligations associated with the closing. Parsing out the intention of the parties will require a variety of key witnesses residing in Colorado. See Affidavit of Lary D. Milner.

Likewise, as discussed above, the bankruptcy claim requires key Colorado witnesses to ascertain the level of ARCO's knowledge of the applicability of CERCLA to the Rico Site and the possibility of a claim against Crystal Oil as CEPCO's parent corporation in 1986. See Affidavit of Lary D. Milner.

Plaintiffs also turn a blind eye to all of the Colorado-based, non-ARCO witnesses required to define appropriate past and future costs and decide CERCLA cost

⁶ See, e.g., Defendant's Memorandum at 20.

allocations for a cleanup occurring in Colorado. See Affidavit of Lary D. Milner. It is nonsensical (and downright unfair) to assert that ARCO should pay to transport all of these witnesses to Louisiana to testify, especially since they do not work for ARCO. Plaintiffs' Memorandum at 19. A Colorado venue would substantially ease and improve access to this invaluable testimony.

Additionally, reams of documentary evidence relevant to issues such as past ownership of the site, historical activities and available PRPs, sit in ARCO's Colorado office as well as in the byzantine Colorado repositories for county, state and federal regulatory offices. See Affidavit of Lary D. Milner. The enormous amount of paper already requested and the broad scope of topics covered by plaintiffs in their initial discovery request exemplifies the importance of holding this adjudication in Colorado. The combined weight of witnesses and documents overwhelmingly favors a Colorado forum.

C. THE PARTIES CHOSE COLORADO SUBSTANTIVE LAW AND JUSTICE FAVORS THE FORUM FAMILIAR WITH APPLYING THE LAW.

Plaintiffs do not dispute that the parties explicitly chose the application of Colorado law to any and all disputes arising under the contract conveying the Rico Site from Crystal to Anaconda. This decision created the expectation that all issues would be decided in accordance with Colorado law. Conducting a case in a forum at home with the governing law weighs substantially in making a transfer decision. Viacom International, Inc. v. Melvin Simon Productions, Inc., 774 F. Supp. 858, 868 (S.D.N.Y. 1991).

Plaintiffs continue to oversimplify the issues by arguing that basic Colorado contract law follows settled principles. Plaintiffs' Memorandum at 21. While that may be true for basic contract law, the problem facing this court involves the complex and wholly unsettled issue of the contractual release of future unknown CERCLA or other environmental liabilities absent clear, specific contractual expression of that intent, particularly in a case such as this one where the contract was executed prior to the enactment of CERCLA. Courts have

taken varying and diametric approaches to this thorny issue. See Henderson, *Environmental Liability and the Law of Contracts*, 50 Bus. Lawyer 183, 215 (1994). Colorado has not yet articulated the appropriate standard to apply to Colorado contracts such as the one at issue between the parties. Far from a simple application of basic, black letter law, this issue poses an unsettled, but critically important, question best left to interpretation in Colorado.

Resolution of key issues concerning the interpretation and application of the Colorado Voluntary Clean-Up Program and its integration with CERCLA also poses complex and undecided questions of Colorado law best decided by a court familiar with Colorado law and policy. Colorado has numerous historic hard rock mining sites that have been conveyed through a series of complex land transfers between private and public parties and now require some level of remediation. Providing a viable solution steeped in Colorado law and policy to intractable issues such as the scope of standard conveyance provisions is a critical issue that cries out for precedent in Colorado.

D. THE OPERATIVE FACTS OF THIS DISPUTE OCCURRED IN COLORADO

As previously discussed, not only did the operative facts occur in Colorado, but a number of potentially responsible parties for CERCLA cost recovery reside in Colorado and are not subject to jurisdiction in Louisiana. See Defendant's Memorandum at 19-20; Affidavit of Lary D. Milner. Plaintiffs dismiss ARCO's need to initiate a parallel CERCLA action in Colorado, if venue is not transferred (Defendant's Brief at 22-23), as "mere assertions." Plaintiffs' Memorandum at 22. This and any other court familiar with CERCLA litigation will recognize that such CERCLA cost-spreading efforts are unavoidable given the enormous costs associated with CERCLA cleanup. ARCO has not yet filed such an action in Colorado in hopes of conserving judicial resources through the transfer of this action. Barring a transfer (or negotiated settlements), ARCO will be forced to bring a cost recovery action in Colorado. Continuing this action in Louisiana will create unwanted multiplicity and confusion.

Plaintiffs recognized that the operative facts were deeply rooted in Colorado when one of their first requests after being contacted by ARCO was to extensively view the Rico Site to gain first hand information on the particularities of this site (Defendant's Memorandum at 5 & Tab 10), even though they now declare that an inspection of the Rico Site by the Court is unwarranted.⁷ An onsite inspection would place this controversy in perspective and provide invaluable insight into many of the key issues at stake.

CONCLUSION

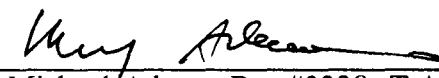
Plaintiffs made the business decision to extract mineral resources from Colorado and leave behind considerable environmental impacts. They should not be allowed to shift the adjudication of the important issues surrounding the responsibility for this cleanup to another forum. Defendant has forcefully demonstrated the importance and justness of trying this action in Colorado.

Shreveport, Louisiana, this 19th day of April, 1996.

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ATLANTIC RICHFIELD COMPANY**

⁷ See Plaintiffs' Memorandum at 20, stating that a site inspection is "not even remotely warranted in this case."

**CRYSTAL OIL COMPANY AND
CRYSTAL EXPLORATION AND
PRODUCTION COMPANY,
Plaintiffs,**

**ATLANTIC RICHFIELD COMPANY,
Defendant.**

MAGISTRATE JUDGE PAYNE

Shreveport, Louisiana, this 19th day of April, 1996.

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STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

Lary D. Milner, being first duly sworn, states as follows:

I am over 21 years of age, have never been convicted of a felony or crime of moral turpitude, and am fully competent to make this affidavit. All the statements made in this affidavit are true to my personal knowledge based on the preliminary inquiry conducted to date.

I am an attorney and I served as an attorney for Atlantic Richfield Company ("ARCO") from 1982 to 1995, most recently as senior counsel, and am currently retained by ARCO as senior legal consultant. I have been admitted to practice as an attorney since 1972. I have personally handled legal aspects of the Rico Site disposition as well as post-sale title issues. I have had oversight responsibilities for the Anaconda/ARCO legal records, including all those pertaining to the Rico Site located in ARCO's Denver office. I reside in Golden, Colorado.

ARCO has made no final decision on what parties to call as witnesses, and the listing of the following names and possible areas of testimony is done strictly for purposes of ARCO's Motion to Transfer Venue and does not waive any privileges or claims of privilege that may exist. Likewise, the listing of potential sources of documentary evidence does not waive any privileges or claims of privilege that may exist. ARCO preserves all rights with respect to the naming of witnesses and development of testimony.

The following potential witnesses are provided to demonstrate the significant numbers of Colorado-based individuals required to testify on the contractual and bankruptcy declaratory judgment claims raised by Crystal Oil Company and Crystal Exploration and Production Company and the CERCLA cost recovery claims raised by ARCO. Additional witnesses will likely be required, particularly as the case escalates to include other parties such as NL Industries, Inc. After reviewing the claims at issue and upon a review of certain documents, I have identified the following specific individuals as potential witnesses and I have identified the general topics of their testimony. Specific addresses and information have been supplied where known, but due to the preliminary stage of this litigation, ARCO has not discovered specific addresses for all parties at this time. For certain parties, the last known location is specified.

at this time. Ms. Fournier worked in the geology department and was involved in permitting and geological issues at the Rico Site, and she would be expected to testify concerning such matters.

7. Douglas V. Johnson -- Former Anaconda Employee and Current ARCO Employee, residing in Anchorage, Alaska. Mr. Johnson served as in-house legal counsel in drafting and advising on the Crystal Exploration/Anaconda conveyance documents. Mr. Johnson would be expected to testify concerning the intent of ARCO in drafting these documents and specifically about ARCO's intent with respect to the provisions relied on by plaintiffs.
8. Kim Penoyer -- Retired Anaconda/ARCO Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Ms. Penoyer worked in the land department on conveyances and tracking title for dispositions. Ms. Penoyer would be expected to testify about the history of the chain of title at the Rico Site relevant to ownership, liability and related issues.
9. Ed Brinley -- Retired Anaconda Employee, retired in Colorado, but present address unknown at this time and presumed remaining in Colorado. Mr. Brinley was employed in the land department and would be expected to testify concerning issues surrounding Anaconda's acquisition of the Rico Site.
10. Mickey Love -- Retired Anaconda/ARCO Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Ms. Love worked in the land department where he addressed title issues and conveyances at the Rico Site. Ms. Love would be expected to testify about the evolution of such title issues at the Rico Site relevant to ownership, liability and related issues.
11. Mike Brotzman -- Retired Anaconda Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Mr. Brotzman was a geologist for Anaconda and is familiar with the Rico Site.
12. Robert Dunlap -- Retired Anaconda Employee, residing in Evergreen, Colorado, but exact address unknown at this time. Mr. Dunlap worked in the land department and helped to negotiate the sale of the Rico Site to the Rico Development Corporation. Mr. Dunlap would be expected to testify concerning this transaction.
13. John Wilson -- Retired Anaconda Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown

at this time. Mr. Wilson was a geologist and played a key role in the exploration program at the Rico Site prior to and following the acquisition. Mr. Wilson would be expected to testify about conditions at the Rico Site before and after the acquisition.

14. Richard Krablin -- Former Anaconda Employee, residing in Pennsylvania. Mr. Krablin acted as the head of the Health, Safety and Environment Department and played a key role in compliance and assessment activities at the Rico Site. Mr. Krablin would be expected to testify about environmental and compliance issues at the Rico Site in the 1980s prior to and after Crystal Oil's bankruptcy.
15. Erwin Sass -- Current ARCO Coal Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Mr. Sass is an engineer with key involvement in the water treatment facility at the Rico Site. Mr. Sass would be expected to testify about water quality concerns at the Rico Site and the history of how water quality concerns have evolved at the site and what actions have been taken to deal with the problems during the relevant period of time.
16. Robert Dent -- Retired Anaconda/ARCO Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Mr. Dent served in the Health, Safety & Environmental Department and was actively involved in permitting and environmental assessment activities at the Rico Site at the time of the conveyance and in the 1980s. Mr. Dent would be expected to testify concerning permitting and environmental assessment activities at the Rico Site which issues impact each of the claims at issue.
17. Don Cameron -- Retired Anaconda Employee, retired in Colorado, but present address unknown at this time and presumed remaining in Colorado. Mr. Cameron was involved with permitting and construction matters and is familiar with the Rico Site.
18. John King -- Retired Anaconda Employee, residing in Kentucky. Mr. King worked in the geology department for Anaconda and was involved in geological surveys at the Rico Site. Mr. King would be expected to testify as to the results of such surveys and their implications for current environmental issues at the Rico Site.
19. Theo Polasek -- Retired Anaconda/ARCO Employee, residing in Texas. Mr. Polasek was involved with negotiating the sale of the Rico Site for Anaconda. Mr. Polasek would be expected to testify

about the intent of the parties concerning the disputed provisions cited by plaintiffs and to explain that these provisions covered only the NPDES permitting problems occurring at the time of closing.

20. Pete Haller -- Former Anaconda/ARCO Employee, residing in Washington. Mr. Haller was an attorney covering environmental legal issues. Mr. Haller would be expected to testify about various environmental issues and the implication of such matters at the Rico Site in the 1980s.
21. Art P. O'Hayre -- Retired Anaconda Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Mr. O'Hayre worked as a hydrologist at the Rico Site and would be expected to testify about hydrological issues at the Rico Site and how the area hydrology impacts past and current environmental concerns at the site.
22. Eugene Tidball -- Retired Anaconda/ARCO Employee, residing in Boulder, Colorado, but exact address unknown at this time. Mr. Tidball served as an attorney in the legal department and was involved with various Rico Site issues in the 1980s. Mr. Tidball would be expected to testify about the evolution of environmental issues at the Rico Site during this period.
23. David M. Arnolds -- Former Anaconda Employee, Current ARCO Coal Co. Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Mr. Arnolds is an attorney for ARCO and handled land matters, including issues arising at the Rico Site, in the 1980s. Mr. Arnolds would be expected to testify concerning Rico Site ownership and land issues.

Consultants at the Rico Site:

24. Travis Hudson -- Titan Environmental Corporation, 7939 E. Arapahoe Road, Suite 230, Englewood, Colorado 80112. Mr. Hudson is a principal member of the Rico Site voluntary cleanup proposal team. Mr. Hudson would be expected to testify concerning development of the engineering aspect of the Rico Site cleanup as well as to provide background information on environmental issues at the Rico Site and the need for remediation work. Mr. Hudson would also be expected to testify about the cost efficiency and effectiveness of the proposed voluntary cleanup as well as costs associated with the cleanup.

25. Paul Bergstrom -- Titan Environmental Corporation, 7939 E. Arapahoe Road, Suite 230, Englewood, Colorado 80112. Mr. Bergstrom has played an integral role on the Rico Site voluntary cleanup proposal team in developing cleanup strategies and alternatives. In addition to providing background information on environmental conditions and issues at the Rico Site, Mr. Bergstrom would be expected to testify about the rationale for the current cleanup strategy and the scope of the proposal as well as the development and submission of the voluntary cleanup proposal application to the State of Colorado.
26. W. Roger Hail, C.E.G. -- ESA Consultants Inc., 2637 Midpoint Drive, Suite F, Fort Collins, Colorado 80525. Mr. Hail is the Project Principal in charge of creating and compiling the Colorado Voluntary Cleanup Applications ("VCUP") pursuant to the Colorado Voluntary Cleanup and Redevelopment Act ("VCRA"). Mr. Hail would be expected to testify about the VCUP and VCRA process, the unique cleanup aspects of historic mining sites, including the Rico Site, the purpose and scope of the Rico Site cleanup and related topics.
27. Edmund J. Schneider, P.G. -- ESA Consultants Inc., 2637 Midpoint Drive, Suite F, Fort Collins, Colorado 80525. Mr. Schneider is the Project Manager for the Colorado Voluntary Cleanup Applications who would be expected to testify about the VCUP process, the need for remediation work at the Rico Site, cost efficiency of the cleanup proposals and specific water quality issues associated with the mining tailing piles, particularly at the Rico-Argentine tailing piles, and the evolution of water quality issues at the Rico Site.
28. Thomas E. Gast -- Environmental Management Services Company, 2301 Research Blvd., Suite 103, Fort Collins, Colorado, 80526. Mr. Gast has been involved with environmental site assessment work at the Rico Site and has been involved in permitting activities associated with the current cleanup.
29. Steve Anderson -- Anderson Engineering, Salt Lake City, Utah. Mr. Anderson has had active involvement in remediation activities at the Rico Site as a member of the Rico cleanup team. Mr. Anderson has helped to plan and engineer the current cleanup proposal and would be expected to testify concerning the scope and necessity of the planned cleanup as well as to issues of specific contamination concerns and the sources of such contamination.

Colorado State Agency Officials:

30. Jeff Deckler -- Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222. Mr. Deckler is a Program Manager at CDPHE with oversight over activities at the Rico Site, and he would be expected to testify generally about the Colorado voluntary cleanup program and the state's goals in implementing and guiding this program as well as more specific information concerning the interplay between the VCUP and water quality issues at the Rico Site. Mr. Deckler would be expected to testify about the critical distinctions between current cleanup activities at the Rico Site compared to the water quality problems addressed in the contract between Crystal Exploration and Anaconda. Mr. Deckler would also be expected to testify concerning the level and scope of activity by state regulatory agencies at the Rico Site prior to 1986 which directly relates to determining ARCO's level of knowledge of potential CERCLA liability at the Rico Site prior to Crystal Oil's bankruptcy.
31. Mark Walker -- Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222. Mr. Walker is a key contact on the VCUP process and would be expected to testify to the level of cleanup required by Colorado at the Rico Site, Colorado's concerns with mining site cleanups and to other aspects of the Rico Site cleanup.
32. Robert Shukle -- Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222. Mr. Shukle has been involved with water quality issues for the State of Colorado for many years. In addition to testifying to aspects of the voluntary cleanup proposed for the Rico Site, Mr. Shukle would be expected to testify concerning the history of the NPDES permit at issue in the conveyance contract which is a subject of one of the claims between Crystal Exploration and Anaconda as well as the scope of such permit and the evolution of Colorado water quality issues at this site. Mr. Shukle's years of involvement in Colorado water quality issues would provide tremendous insight on the relation of water quality and permitting to the claims raised by Crystal and Crystal Exploration.
33. Jim McArdle -- Colorado Office of State Engineer, Mined Land Reclamation Board, 1313 Sherman St., Room 821, Denver, Colorado 80203. Mr. McArdle has years of experience with reclamation at Colorado mining sites and would be expected to

testify concerning specific Colorado reclamation issues associated with mining sites and the Rico Site.

34. Jim Herron -- Colorado Office of State Engineer, Mined Land Reclamation Board, 1313 Sherman St., Room 821, Denver, Colorado 80203. Mr. Herron has experience with Colorado mining reclamation issues and would be expected to testify concerning Colorado reclamation requirements and achieving these goals through the voluntary cleanup process.

Federal Regulatory Agency Officials Located in Colorado:

35. Nancy Mangone -- U.S. Environmental Protection Agency, Regional Office, 999 18th St., Denver, Colorado. Ms. Mangone, EPA counsel, has been integrally involved in determining how the Colorado Voluntary Cleanup and Redevelopment Act and CERCLA will interplay and coexist. Ms. Mangone would be expected to testify concerning how a cleanup under VCRA interacts with CERCLA and how costs incurred in a VCRA cleanup are recoverable in accordance with CERCLA.
36. Pat Smith -- U.S. Environmental Protection Agency, Regional Office, 999 18th St., Denver, Colorado. Ms. Smith serves as an EPA CERCLA program coordinator for Region VIII of the EPA. Ms. Smith would be expected to testify concerning EPA's evolving interest in and knowledge of conditions at the Rico Site which impacts plaintiffs' bankruptcy claim, and to testify to cleanup requirements at the Rico Site and recovery of cleanup costs in accordance with CERCLA.
37. Greg Oberley -- U.S. Environmental Protection Agency, 999 18th St., Denver, Colorado. Mr. Oberley served as the EPA Site Assessment Manager for the Rico Site Field Sampling Plan for Expanded Site Inspection, dated July 25, 1995. Mr. Oberley would be expected to testify as to the scope and findings of this report which implicates the need for the current cleanup and may go to establishing ARCO's level of knowledge on whether the Rico Site was subject to CERCLA liability in 1986.
38. Mike Znerold -- U.S. Forest Service, 100 North 6th, Durango, Colorado. Mr. Znerold acts as the District Ranger for the San Juan National Forest and would be expected to testify on behalf of the Forest Service as a landowner and potentially responsible party at the Rico Site.

Federal Agency Consultants:

39. T.F. Staible -- URS Consultants, Inc., 1099 18th St., Suite 700, Denver, Colorado 80202. Mr. Staible was the Program Manager for two reports prepared on behalf of EPA for the Rico Site, including the Site Inspection Prioritization dated October 11, 1994 and the Rico Site Field Sampling Plan for Expanded Site Inspection, dated July 25, 1995. Mr. Staible would be expected to testify about the scope, purpose and findings of these reports which outline issues identified by EPA at the Rico Site.
40. Michael V. Carr -- URS Consultants, Inc., 1099 18th St., Suite 700, Denver, Colorado 80202. Mr. Carr was the Project Manager for the EPA report on Site Inspection Prioritization dated October 11, 1994. Mr. Carr would be expected to testify concerning the methodology and results of this study and the extent to which such findings indicated a need for remediation activities at the Rico Site.
41. Barry Hayhurst -- URS Consultants, Inc., 1099 18th St., Suite 700, Denver, Colorado 80202. Mr. Hayhurst operated as Site Manager for the Rico Site Field Sampling Plan for Expanded Site Inspection, dated July 25, 1995. Mr. Hayhurst would be expected to testify concerning the methodology and results of this study and the extent to which such findings indicated a need for remediation activities at the Rico Site.

Rico, Colorado town developers and landowners -- the following listing of Colorado citizens likely to appear as witnesses and which may become involved in this action. As citizens of Colorado with few substantial or material ties outside of the state, most of these parties would not be subject to jurisdiction in Louisiana:

42. Stan Foster -- Manager of Rico Properties, L.L.C. and local landowner, 17 Glasgow Ave., Rico, Colorado 81332. Mr. Foster serves as the Manager of Rico Properties, L.L.C. which is a landowner at the Rico Site. As the current owner of areas of the Rico Site, Mr. Foster, representing Rico Properties, L.L.C., would be expected to testify concerning the voluntary cleanup process, evolving environmental issues at the Rico Site and the need for mitigation, and costs incurred relating to his property.
43. Wayne E. Webster -- President of Rico Development Corporation, Rico, Colorado. Mr. Webster serves as the President of the Rico Development Corporation which purchased the Rico Site from ARCO in 1986. As the current owner of significant areas of the

Rico Site, Mr. Webster, representing Rico Development Corporation, would be expected to testify concerning the voluntary cleanup process, evolving environmental issues at the Rico Site and the need for mitigation, and costs incurred relating to his property.

44. Eric Heil, Esq. -- Rico Town Attorney, 18 N. River St., Rico, Colorado 81332. The Town of Rico also owns property potentially impacted by Rico Site conditions, and Mr. Heil would be expected to testify about the voluntary cleanup process and the evolving relationship between the Town and the Rico Site.
45. Frieda Davis -- local landowner, Rico, Colorado. Ms. Davis, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on her property and related matters.
46. Robert Hanock -- local landowner, Rico, Colorado. Mr. Hanock, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on his property and related matters.
47. Max Sitton -- local landowner, Rico, Colorado. Mr. Sitton, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on his property and related matters.
48. Laura Hannigan -- local landowner, Rico, Colorado. Ms. Hannigan, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on her property and related matters.
49. Myron Jones -- local landowner, Rico, Colorado. Mr. Jones, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on his property and related matters.

50. Margaret Matzick -- local landowner, Rico, Colorado. Ms. Matzick, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on her property and related matters.
51. Val Truelsen -- local landowner, Rico, Colorado. Ms. Truelsen, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on her property and related matters.
52. Deanna E. Truelson -- local landowner, Rico, Colorado. Ms. Truelsen, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on her property and related matters.

DOCUMENTS

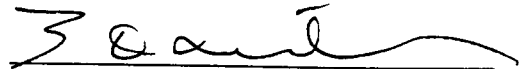
ARCO's repository of documents pertaining to the Rico Site, including documents concerning the conveyance of the Rico Site from Crystal Exploration to Anaconda, evolving environmental conditions at the Site and matters related to the current voluntary cleanup at the Site in accordance with the Colorado Voluntary Cleanup and Redevelopment Act, resides in Denver, Colorado. The ARCO Rico Site files contain thousands of documents.

Each consultant listed above as a potential witness has documents pertaining to current and/or historic environmental conditions at the Rico Site or documents related to the current voluntary cleanup proposal. These documents reside in the Colorado offices of these consulting companies.

Each state and federal regulatory agency listed above, as well as the Town of Rico and Dolores County, has documents pertaining to current and/or historic environmental conditions at the Rico Site or documents related to the current voluntary cleanup proposal. These documents reside in the Colorado offices of these regulatory agencies.

Further affiant sayeth not.

IN WITNESS WHEREOF, I have executed this affidavit on the 16th day of April, 1996.


Lary D. Milner

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

Subscribed and sworn to before me this 16th day of April, 1996.

Witness my hand and official seal.

My commission expires: 2/15/97


Notary Public